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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 350 WEST ASH URBAN HOME, INC., a
12 California corporation; 350 W.A. LLC, a
13 California limited liability company;
14 B&H PROPERTY SYSTEMS, INC., a
15 California corporation; and DAVID A.
16 BLACKBURN, an individual,

17 Plaintiffs,

18 v.

19 EVEREST INDEMNITY INSURANCE
20 COMPANY, a Delaware corporation;
21 THE INSURANCE COMPANY OF THE
22 STATE OF PENNSYLVANIA, a
23 qualified Pennsylvania corporation; and
24 DOES 1 through 50, inclusive,

25 Defendants.

Case No.: 13-CV-18 JLS (DHB)

ORDER ON MOTIONS IN LIMINE

(ECF Nos. 83, 84, 85, 94, 95)

26 Presently before the Court are Defendant Everest Indemnity Insurance Company's
27 Motions in Limine to Exclude: (1) All Evidence Relating to "Opportunity Cost" Damages
28 (ECF No. 83); All Evidence Relating to "Highlighted Invoices" (ECF No. 84); and (3) All
Damages, Documents, and Witnesses Not Properly Disclosed (ECF No. 85) (collectively,
Defendant's MILs), as well as Plaintiffs 350 West Ash Urban Home, Inc.; 350 W.A. LLC;
B&H Property Systems, Inc.; and David A. Blackburn's Motions in Limine to Exclude:

(1) Reference to Unrelated Litigation (ECF No. 94), and (2) Everest's Belatedly Proffered Excuses for Denying Plaintiffs' Claim and Everest's Own Bad Faith (ECF No. 95) (collectively, Plaintiffs' MILs). Also before the Court are Defendants' Oppositions to Plaintiffs' MILs (ECF Nos. 99, 102, respectively), Plaintiffs' Oppositions to Defendants' MILs (ECF Nos. 97, 98, 100, respectively), Defendants' Replies in Support of Defendant's MILs (ECF Nos. 103, 104, 105, respectively), Plaintiffs' Replies in Support of Plaintiffs' MILs (ECF Nos. 106, 107, respectively), and Plaintiffs' supporting exhibits (ECF Nos. 96, 108). A hearing was held on June 23, 2016. Having considered the parties' arguments and the law, the Court **GRANTS** Defendant's first MIL (ECF No. 84), **DENIES** Defendants' second MIL (ECF No. 85), **DENIES** Defendant's third MIL (ECF No. 85), **GRANTS** Plaintiffs' first MIL (ECF No. 95), and **DENIES** Plaintiffs' second MIL (ECF No. 96), although the Court reiterates that these rulings may be revisited during the trial for good cause.

In its first MIL, Defendant asks the Court to exclude all evidence and testimony as to Plaintiff Blackburn's lost opportunity cost damages. (*See generally* ECF No. 83.) Plaintiffs counter that they are seeking only prejudgment interest, which the Court may—in its discretion—award at a rate higher than 10%. (*See* Pls.' 1st Opp'n 5–7, ECF No. 97.) Under the plain language of California Civil Code § 3289, however, the Court finds that it is not able to award prejudgment interest at a rate higher than 10% per year. *See* Cal. Civ. Code § 3289(b) (“If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach.”); *see also* Cal. Const. art. XV, § 1 (“The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum.”). The cases Plaintiffs cite do not compel a different conclusion. Consequently, Plaintiffs may not seek prejudgment interest greater than 10% per year. To the extent Plaintiffs are, as Defendant argues, seeking damages other than prejudgment interest and akin to lost opportunity costs, those damages were not properly disclosed to Defendant under Rule 26. Because this failure to disclose was not substantially justified or harmless,

1 it mandates exclusion under Rule 37. Accordingly, the Court **GRANTS** Defendant's first
 2 motion in limine (ECF No. 83), thereby precluding Plaintiffs from offering any evidence
 3 or argument regarding lost opportunity costs.

4 Defendant's second motion in limine asks the Court to exclude all evidence or
 5 testimony relating to the "highlighted entries" on the Wayne Thomas & Associates
 6 invoices. (*See generally* ECF No. 84.) It appears to the Court that mistakes were made on
 7 both sides: although Plaintiff Blackburn's specious invocation of the attorney-client
 8 privilege deprived Defendant of a fair opportunity to conduct discovery, the Court also
 9 questions whether Plaintiff Blackburn was the proper party to depose. The Court therefore
 10 **DENIES** Defendant's second motion in limine (ECF No. 84), but **REOPENS**
 11 **DISCOVERY** to August 1, 2016 as to the reasons any particular billing entries were
 12 highlighted.

13 In its third motion in limine, Defendant broadly requests exclusion of all damages,
 14 documents, and witnesses not properly disclosed. (*See generally* ECF No. 85.)
 15 Specifically, Defendant requests that the Court preclude evidence of opportunity cost
 16 damages "or any other non-disclosed damages" (*id.* at 12), as well as "any exhibits not
 17 properly disclosed and/or exchanged" (*id.* at 15). To the extent this motion is not
 18 duplicative of Defendant's first motion in limine, the Court **DENIES** Defendant's third
 19 motion in limine. (ECF No. 85.) Objections to "any other non-disclosed damages" or "any
 20 exhibits not properly disclosed and/or exchanged" are far too broad, *see, e.g., Actuate Corp.*
 21 *v. Aon Corp.*, No. C 10-05750 WHA, 2012 WL 2285187, at *4 (N.D. Cal. June 18, 2012),
 22 and may therefore be renewed at trial on an item-by-item basis.

23 Plaintiffs' first motion in limine seeks exclusion of all evidence of the Hoko, Helleis,
 24 and Century Actions. (*See generally* ECF No. 94.) Because the Court concludes that these
 25 actions are irrelevant to the issues in the current action—and because Defendant did not
 26 object to the Court's tentative to that effect—the Court **GRANTS** Plaintiffs' first motion
 27 in limine. (ECF No. 94.) Accordingly, Defendants are precluded from introducing
 28 evidence or testimony regarding these three lawsuits at trial.

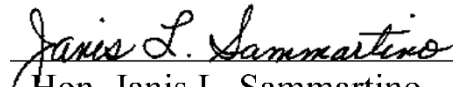
1 In their second motion in limine, Plaintiffs ask the Court to exclude all evidence
 2 related to Defendant's denial of Plaintiffs' claim and in support of Defendant's claim that
 3 it did not commit bad faith. (*See generally* ECF No. 95.) Because this motion in
 4 impermissibly broad, *see Actuate Corp.*, 2012 WL 2285187, at *4, the Court **DENIES**
 5 Plaintiffs' second motion in limine (ECF No. 95). Plaintiffs may, of course, renew their
 6 objections to specific evidence at trial.

7 **CONCLUSION**

8 In light of the foregoing, the Court **GRANTS** Defendant's first MIL (ECF No. 84),
 9 **DENIES** Defendants' second MIL (ECF No. 85), **DENIES** Defendant's third MIL (ECF
 10 No. 85), **GRANTS** Plaintiffs' first MIL (ECF No. 95), and **DENIES** Plaintiffs' second
 11 MIL (ECF No. 96). The Court **HEREBY REOPENS DISCOVERY** to August 1, 2016
 12 as to the highlighted invoices. Any disputes are to be directed to Magistrate Judge Jill L.
 13 Burkhardt. Additionally, the Court **HEREBY DIRECTS** the parties to contact Magistrate
 14 Judge Burkhardt, or a private mediator of their choosing, to further explore alternative
 15 resolution of this case.

16 **IT IS SO ORDERED.**

17
 18 Dated: June 27, 2016


 Hon. Janis L. Sammartino
 United States District Judge